



DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 9

[Docket ID: FSA–2020–0006]

RIN 0503-AA71

Coronavirus Food Assistance Program 2; Producers of Sale-Based Commodities and Contract Producers

AGENCY: Office of the Secretary, Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This rule amends the Coronavirus Food Assistance Program 2 (CFAP 2) provisions related to assistance for producers of sales-based commodities and contract producers. This rule also announces the deadline for submitting CFAP 2 applications and clarifies general provisions related to equitable relief and refunds.

DATES: *Effective date:* [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

Comment due date: With grass seed being added as an eligible crop under CFAP, we will consider comments on the information collection requirements under the Paperwork Reduction Act that we receive by: [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: We invite you to submit comments on the information collection requirements. You may submit comments by any of the following methods:

- Federal eRulemaking Portal: Go to: www.regulations.gov and search for Docket ID FSA–2020–0006. Follow the online instructions for submitting comments.

- Mail, Hand-Delivery, or Courier: Director, Safety Net Division, Farm Service Agency, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop 0510, Washington, DC 20250– 0522. In your comment, specify the docket ID FS–2020–0006.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Comments will be available for inspection online at <http://www.regulations.gov>. Copies of the information collection may be requested by contacting Brittany Ramsburg at the above address.

FOR FURTHER INFORMATION CONTACT: Kimberly Graham; telephone: (202) 720-6825; email: Kimberly.Graham@usda.gov. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice) or (844) 433-2774 (toll-free nationwide).

SUPPLEMENTARY INFORMATION: USDA established CFAP to assist producers of agricultural commodities marketed in 2020 who faced continuing market disruptions, reduced farm-level prices, and increased production and marketing costs due to COVID-19. CFAP went through two rounds of payments (CFAP 1 and CFAP 2), and the Farm Service Agency (FSA) is administering CFAP 2, as directed by the Secretary of Agriculture. USDA announced CFAP 2 through a final rule published in the *Federal Register* on September 22, 2020. 85 FR 59380–59388. A second final rule was published on January 19, 2021. 86 FR 4877–4883. That rule amended CFAP 2 provisions and included assistance for contract producers of swine and poultry (including broilers, pullets, layers, chicken eggs, and turkeys), who were not originally eligible for

CFAP 2. After publication of that rule, USDA suspended approval of applications from contract producers while that final rule was under review.

As a result of that review and for consistency with the provisions of the Consolidated Appropriations Act, 2021 (CAA), Pub. L. 116-260, USDA is making changes to the provisions for CFAP 2 as described below. These changes include adjusting the CFAP 2 application deadline, changing the calculation of payments for sales-based commodities, adding grass seed as an eligible sales-based commodity, changing aspects of the provisions for assistance for contract producers, and clarifying the applicability of equitable relief provisions and provisions requiring refunds.

Application Deadline

On March 24, 2021, USDA announced in a news release that the application period for CFAP 2 was reopened for all eligible producers for at least 60 days beginning on April 5, 2021. This reopening allowed USDA to improve outreach efforts and ensure that producers in socially disadvantaged communities were informed and aware of the application process. This rule announces that the CFAP 2 application deadline will be [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], and amends 7 CFR 9.4 to specify the deadline. This deadline applies to all producers applying for CFAP 2, including producers of sales-based commodities and contract producers who submit new applications or revise previously filed applications due to the changes included in this rule.

Sales-Based Commodities

Consistent with section 751 of Subtitle B of Title VII of Division N of CAA, USDA is amending the CFAP 2 payment calculation for sales-based commodities in 7 CFR 9.203(i) and (j) to allow eligible producers to substitute 2018 sales for 2019 sales. Previously, payments for producers of sales-based commodities were based only on 2019 sales; however, various conditions occurring in 2019 could have adversely affected a

producer's amount of sales and therefore their CFAP 2 payment. CFAP 2 uses a producer's 2019 sales as an approximation of what the producer would have expected to market in 2020, which could not be determined for most producers at the time of application. Under the final rule published on January 19, 2021, crop insurance indemnities under the Federal Crop Insurance Act, 7 U.S.C 1501 - 1524, and 2019 crop year payments under the Noninsured Crop Disaster Assistance Program (NAP) and Wildfires and Hurricanes Indemnity Program Plus (WHIP+), are included as eligible sales under 7 CFR 9.202(i) in addition to the amount of the producer's 2019 sales, as required by Subtitle B, section 751, of the CAA. That change is intended to more accurately represent what a producer would have expected to have marketed in 2020 by taking into account commodities that would have been available for marketing in 2019 but were lost due to natural events. However, crop insurance indemnities and NAP and WHIP+ program payments for a crop are less than the full amount that a producer would have expected to receive for marketing the commodity if there was no loss. Giving producers the option to substitute 2018 sales (including 2018 crop insurance indemnities and 2018 crop year NAP and WHIP+ payments) for 2019 sales provides additional flexibility to producers who had reduced sales in 2019.

In addition, USDA has determined that producers of grass seed faced continuing market disruptions, low farm-level prices, and significant marketing costs associated with the COVID-19 outbreak, similar to producers of commodities that were previously determined to be eligible for CFAP 2 assistance. As a result, USDA is amending the definitions of "Ineligible commodities" and "Sales-based commodities" in § 9.201 to make grass seed an eligible commodity.

Contract Producers

The final rule published on January 19, 2021, added provisions to provide assistance for contract producers and specified that those payments would be issued with

remaining funding authorized by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act; Pub. L. 116–136). Contract producer payments were suspended before any CARES Act funding was used to fund those payments. Subtitle B, section 751, of the CAA specifically directs the Secretary to use not more than \$1 billion of the additional funding provided under the CAA to make payments to contract producers of livestock and poultry to cover not more than 80 percent of their revenue losses, as determined by the Secretary of Agriculture, from January 1, 2020, through December 27, 2020. While CAA uses the term “contract grower” and the CFAP 2 regulation uses the term “contract producer” both terms refer to and mean the same people or entities; this rule uses the term “contract producer,” for consistency. Payments to contract producers will be funded as authorized by the CAA rather than the CARES Act.

This rule also amends the provisions for contract producers based on additional evaluation of CFAP 2 and stakeholder concerns related to the payment calculation. The previous final rule provided assistance for contract producers of broilers, pullets, layers, chicken eggs, turkeys, hogs, and pigs. After further review, USDA has determined that contract producers of ducks, geese, pheasants, and quail will also be eligible, including contract producers of eggs of all eligible poultry types. In addition to the listed livestock and poultry types, USDA may determine that additional livestock and poultry types are eligible at a later time. These changes are reflected in a new definition of “eligible contract livestock or poultry” in 7 CFR 9.201, in which USDA is also clarifying that contract producers of breeding stock of those defined eligible livestock and poultry are eligible for CFAP 2. Contract producers of breeding stock are included because those producers may have suffered a revenue loss for the livestock and poultry, regardless of the livestock owner’s intended end use of the animals. This rule also amends the definition of “producer” in 7 CFR 9.201 to specify that the requirement that a producer must be in the business of farming at the time of application does not apply to contract

producers because contract producers may have had contracts terminated for reasons outside of their control due to COVID-19.

The final rule published on January 19, 2021, specified that payments for contract producers would be based on a comparison of eligible revenue for the periods of January 1, 2019, through December 27, 2019, and January 1, 2020, through December 27, 2020. This rule amends the regulation in 7 CFR 9.202(b) and 9.203(l) to allow a contract producer to elect to use eligible revenue from the period of January 1, 2018, through December 27, 2018, in lieu of during that date range in 2019. This change is intended to provide flexibility and make the program more equitable for contract producers who had reduced revenue in 2019 compared to a normal year for their operation.

The payment calculation in the final rule published on January 19, 2021, specified that payments for contract producers would be equal to the eligible revenue received from January 1, 2019, through December 27, 2019, minus the eligible revenue received from January 1, 2020, through December 27, 2020, multiplied by 80 percent. In response to additional review and stakeholder concerns about certain situations when the original calculation would not accurately capture a contract producer's loss of eligible revenue due to COVID-19, this rule amends the regulation at 7 CFR 9.203(l)(4) to allow FSA to adjust a contract producer's eligible revenue based on information certified by the contract producer on supplemental form AD-3117B if a contract producer did not have a full period of revenue from January 1 to December 27 for either 2018 or 2019, or if the contract producer increased their operation size in 2020. Information required to calculate these adjustments includes a contract producer's square footage increase to the operation in 2020, or a contract producer's production or number of turns for 2018, 2019, or 2020, as applicable.

This rule also provides assistance in 7 CFR 9.202(d) and 9.203(m) to producers who were not in operation in 2018 or 2019, who would have been ineligible under the

previous final rule. Assistance for these producers is based on their 2020 eligible revenue and the average revenue loss level, which will be determined by USDA for a geographic area based on the best available data including, but not limited to, losses reported by other contract producers for the same area and type of livestock or poultry as reported in their CFAP 2 applications.

This rule also specifies that payments to contract producers will be calculated separately for the categories of livestock listed in § 9.203(n). As provided in the previous final rule, payments to contract producers may be factored if total calculated payments exceed the available funding under 7 CFR 9.203(o).

Other Changes

This rule amends § 9.7(a) to address situations where FSA determines that the applicant intentionally misrepresented either the total amount or producer's share of the commodities, acres, sales, or revenue on their application. In those cases, the producer's application will be disapproved and the participant must refund the full payment to FSA with interest from the date of disbursement. This rule also amends § 9.7(b) to specify that the equitable relief provisions of 7 CFR part 718, subpart D, apply to CFAP determinations.

Notice and Comment, Effective Date, and Exemptions

The Administrative Procedure Act (APA), 5 U.S.C. 553(a)(2), provides that the notice-and-comment and 30-day delay in the effective date requirements do not apply when the rule involves specified actions, including matters relating to benefits. This rule governs CFAP for payments to certain commodity producers and therefore falls within the benefits exemption.

This rule is exempt from the regulatory analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The requirements for the regulatory

flexibility analysis in 5 U.S.C. 603 and 604 are specifically tied to the requirement for a proposed rule by section 553 or any other law; in addition, the definition of rule in 5 U.S.C. 601 is tied to the publication of a proposed rule.

The Office of Management and Budget (OMB) designated this rule as major under the Congressional Review Act (CRA), as defined by 5 U.S.C. 804(2). Section 808 of the CRA allows an agency to make a major regulation effective immediately if the agency finds there is good cause to do so. The beneficiaries of this rule have been significantly impacted by the COVID-19 outbreak, which has resulted in significant declines in demand and market disruptions. USDA finds that notice and public procedure would be contrary to the public interest. Therefore, even though this rule is a major rule for purposes of the Congressional Review Act, USDA is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review. Accordingly, this rule is effective upon publication in the *Federal Register*.

Executive Orders 12866 and 13563

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13563 for the analysis of costs and benefits apply to rules that are determined to be significant.

The Office of Management and Budget (OMB) designated this rule as economically significant under Executive Order 12866. Therefore, OMB has reviewed this rule.

The costs and benefits of this rule are summarized below. The full cost benefit analysis is available on [regulations.gov](https://www.regulations.gov).

Cost Benefit Analysis Summary

CFAP 1 and CFAP 2 assisted producers of agricultural commodities marketed in 2020 who faced continuing market disruptions, reduced farm-level prices, and increased production and marketing costs due to COVID-19. These additional costs are associated with declines in demand, surplus productions, or disruptions to shipping patterns and marketing channels.

In implementing these programs, additional assistance was deemed necessary. Subdivision B, section 751, of the CAA authorizes payments of up to 80 percent of contract producers' revenue loss and up to \$1 billion in funding. To qualify for payment, a producer must demonstrate a drop in revenue ("revenue loss") between 2019 and 2020. The producer can then choose their 2018 revenue in lieu of their 2019 revenue in the revenue loss calculation if their 2018 revenue is more representative of anticipated revenue in 2020. In addition, note that the CFAP Additional Assistance regulation, published on January 19, 2021, provided assistance to contract producers. CFAP Additional Assistance activity was paused in late January 2021. No payments were issued to contract producers under that regulation.

This rule and cost-benefit analysis use an 80 percent payment factor, the maximum allowed by the CAA, and apply it to the individual producer's actual 2019 to 2020 revenue change. Contract producer payments are highly uncertain and can depend on the number of animals received by the contractor and the price paid by the integrator to the contractor. The projections contained in this assessment provide an upper bound at over \$1 billion. However, available evidence suggests that year-to-year differences in animal volume may moderate that estimate. Broiler and hog contract producers will receive the bulk of payments.

In contrast to assistance for contract producers, CAA provides authority for, but does not mandate, use of 2018 or 2019 revenue data in the calculation of payments for sales-based¹ commodities. This provision, included in this rule, ensures that farmers who had lower sales in 2019 than in 2018—for example, those unable to plant a 2019 crop—would not be penalized in the payment calculation. Fifty-two percent of sales-based applicants are projected to prefer the use of 2018 revenue data (relative to 2019 data) based on analysis of USDA cash receipts data. The expected cost associated with this change is estimated at \$207 million.

Upon implementation of the CFAP 2 rule, FSA became aware that certain commodities had experienced COVID-19 market disruptions but had not been explicitly included in the initial CFAP 2 rule. For example, grass seed was not included in the initial CFAP 2 rule, but evidence indicates that production and revenue were significantly affected. This rule clarifies that grass seed is now an eligible sales-based commodity, the expected cost is \$41 million.

FSA, which implemented CFAP 1 and 2, is implementing these three provisions. Producers must fill out paperwork to participate in these programs, and the associated administrative costs are estimated at \$1.5 million for contract producers, \$2.2 million for the use of 2018 versus 2019 revenue in the calculations for sales-based commodities, and \$0.1 million for grass seed.

Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR

¹This category includes fruits, vegetables, and nuts; dry edible beans, lentils, dry edible peas, and chickpeas; and commodities including aquaculture, turkeys, mink, mohair, rabbits, and others. For more information, see the CFAP 2 cost-benefit assessment at: <https://www.farmers.gov/sites/default/files/documents/CFAP2-CBA-09252020.pdf>.

parts 1500–1508), and because USDA will be making the payments to producers the USDA regulations for compliance with NEPA (7 CFR part 1b).

Although OMB has designated this rule as “economically significant” under Executive Order 12866, “economic or social effects are not intended by themselves to require preparation of an environmental impact statement” when not interrelated to natural or physical environmental effects (see 40 CFR 1502.16(b)). CFAP was designed to avoid skewing planting decisions. Producers continue to make their planting and production decisions with the market signals in mind, rather than any expectation of what a new USDA program might look like. The discretionary aspects of CFAP (for example, determining adjusted gross income (AGI) and payment limitations) were designed to be consistent with established USDA and the FSA administered programs and are not expected to have any impact on the human environment, as CFAP payments will only be made after the commodity has been produced. Accordingly, the following Categorical Exclusion in 7 CFR part 1b applies: §1b.3(a)(2), which applies to activities that deal solely with the funding of programs, such as program budget proposals, disbursements, and the transfer or reprogramming of funds. As such, the implementation of and participation in CFAP do not constitute major Federal actions that would significantly affect the quality of the human environment. Therefore, an environmental assessment or environmental impact statement for this regulatory action will not be prepared; this rule serves as documentation of the programmatic environmental compliance decision for this Federal action.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial actions may

be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 are to be exhausted.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments, or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

USDA has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that required Tribal consultation under Executive Order 13175 at this time. If a Tribe requests consultation, the USDA Office of Tribal Relations (OTR) will ensure meaningful consultation is provided where changes, additions, and modifications are not expressly mandated by law. Outside of Tribal consultation, USDA is working with Tribes to provide information about CFAP additional assistance and other issues.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost-effective or least

burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Programs

The title and number of the Federal Domestic Assistance Program found in the Catalog of Federal Domestic Assistance to which this rule applies is 10.132—
Coronavirus Food Assistance Program 2.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, FSA is administering the information collection activities under a currently approved information collection request of OMB control number of 0560-0297. Thus, there are no required changes to the information collection request for FSA in providing assistance for contract producers of eligible contract livestock and poultry and to provide additional assistance for other commodities as described in this rule.

Additionally, the new information collection request for the eligible grass seed that will be included in the CFAP was submitted to OMB for emergency approval. FSA will collect and evaluate the application from the producers and other required paperwork. Following the 60-day public comment period provided by this rule, FSA intends to merge the burden hours associated with the new grass seed information collection request (ICR) into the main CFAP 2 ICR that is currently approved under OMB control number 0560-0297.

Title: CFAP 2.

OMB Control Number: 0560-New.

Type of Request: New Collection.

Abstract: This information collection is required to support CFAP 2 information collection activities to provide payments to eligible producers who, with respect to their agricultural commodities, have been impacted by the effects of the COVID–19 pandemic. The information collection is necessary to evaluate the application and other required paperwork for determining the producer’s eligibility and assist in the producer’s payment calculations.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hour is the estimated average time per response multiplied by the estimated total annual responses.

Estimate of Respondent Burden: Public reporting burden for this information collection is estimated to average 0.43 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collections of information.

Type of Respondents: Producers or farmers.

Estimated Annual Number of Respondents: 2,204.

Estimated Number of Responses Per Respondent: 2.005.

Estimated Total Annual Responses: 4,419.

Estimated Average Time Per Response: 0.43 hours.

Estimated Annual Burden on Respondents: 1,892 hours.

FSA is requesting comments on all aspects of this information collection to help us to:

- (1) Evaluate whether the collection of information is necessary for the proper performance of the functions of FSA, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the FSA’s estimate of burden including the validity of the methodology and assumptions used;

- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this document, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720-2600 or (844) 433-2774 (toll-free nationwide). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at

<https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or email: OAC@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

List of Subjects in 7 CFR Part 9

Agricultural commodities, Agriculture, Disaster assistance, Indemnity payments.

For the reasons discussed above, this final rule amends 7 CFR part 9 as follows:

PART 9 – CORONAVIRUS FOOD ASSISTANCE PROGRAM

1. The authority citation for part 9 continues to read as follows:

Authority: 15 U.S.C. 714b and 714c; Division B, Title I, Pub. L. 116-136, 134 Stat. 505; and Division N, Title VII, Subtitle B, Chapter 1, Pub. L. 116-260.

Subpart A—General Provisions

2. Amend § 9.4 as follows:

- a. Revise paragraphs (a)(1) and (2); and
- b. Remove paragraph (a)(3).

The revisions read as follows:

§ 9.4 Time and method of application.

(a) * * *

(1) September 11, 2020, for payments issued under § 9.102; and

(2) [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], for payments issued under § 9.203.

* * * * *

3. Amend § 9.7 as follows:

a. Revise paragraph (a); and

b. In paragraph (b), remove the words “in parts” and add “in part 718, subpart D, and parts” in their place.

The revision reads as follows:

§ 9.7 Miscellaneous provisions.

(a) If a CFAP payment resulted from erroneous information provided by a participant, or any person acting on their behalf, the payment will be recalculated and the participant must refund any excess payment with interest calculated from the date of the disbursement of the payment.

(1) If FSA determines that the applicant intentionally misrepresented either the total amount or applicant’s share of the commodities, acres, sales, or revenue on their application, the application will be disapproved and the applicant must refund the full payment to FSA with interest from the date of disbursement.

(2) Any required refunds must be resolved in accordance with part 3 of this title.

* * * * *

Subpart C—CFAP 2

4. Amend § 9.201 as follows:

a. Add the definitions of “Average revenue loss level” and “Eligible contract livestock or poultry” in alphabetical order;

b. In the definition of “Eligible revenue”, remove the words “broilers, pullets, layers, chicken eggs, turkeys, hogs, or pigs” and add the words “eligible contract livestock or poultry” in their place;

c. In the definition of “Ineligible commodities”, remove the words “ineligible crops” and add the words “ineligible crops other than grass seed” in their place;

d. In the definition of “Producer”, in the second sentence, remove the word “Producers” and add the words “Except for contract producers, producers” in its place;

e. In the definition of “Sales-based commodities”, remove the words “milk, mink (including pelts);” and add the words “milk, grass seed, mink (including pelts),” in its place; and

f. Add the definition of “Turn” in alphabetical order.

The additions read as follows:

§ 9.201 Definitions.

* * * * *

Average revenue loss level means the average percentage of revenue loss for contract producers determined by USDA for a geographic area based on the best available data including, but not limited to, losses reported by contract producers for the same area and type of livestock or poultry.

* * * * *

Eligible contract livestock or poultry means broilers, pullets, layers, poultry eggs, turkeys, ducks, geese, pheasants, quail, hogs, pigs, and other livestock or poultry types determined eligible and announced by USDA, including breeding stock of those eligible livestock and poultry types.

* * * * *

Turn means a group of eligible contract livestock or poultry that is delivered to a contract producer who provides labor and equipment to produce the livestock or poultry for the integrator or owner.

* * * * *

5. Amend § 9.202 by revising paragraphs (b)(1) through (3) and adding paragraphs (b)(4) and (d) to read as follows:

§ 9.202 Eligibility.

* * * * *

(b) * * *

(1) Produced eligible contract livestock or poultry under a contract in either the 2018 or 2019 calendar year and in the 2020 calendar year;

(2) Received revenue under such a contract during the period from January 1, 2020, through December 27, 2020;

(3) Had a loss in eligible revenue for the period from January 1, 2020, through December 27, 2020, as compared to the period from:

(i) January 1, 2018, through December 27, 2018; or

(ii) January 1, 2019, through December 27, 2019; and

(4) Meet all other requirements for eligibility under this part.

* * * * *

(d) Contract producers are eligible for payment under § 9.203(m) if they:

(1) Did not receive eligible revenue from January 1 through December 27 in 2018 or 2019, but received eligible revenue for the period from January 1, 2020, through December 27, 2020; and

(2) Meet all other requirements for eligibility under this part.

6. Amend § 9.203 as follows:

a. Revise paragraph (i);

b. In Table 2 to paragraph (j), revise the first column heading;

c. Revise paragraph (l); and

d. Add paragraphs (m) through (o).

The revisions and additions read as follows:

§ 9.203 Calculation of payments.

* * * *

(i) Payments for sales-based commodities will be:

(1) Based on one of the following as elected by the producer:

(i) The producer's sales for calendar year 2018 and crop insurance indemnities and NAP and WHIP+ payments for the 2018 crop year for all sales-based commodities;
or

(ii) The producer's sales for calendar year 2019 and crop insurance indemnities and NAP and WHIP+ payments for the 2019 crop year for all sales-based commodities.

(2) Equal to the sum of the results for the following calculation for each sales range in Table 2 of paragraph (j) of this section:

(i) The sum of the amount of the producer's eligible sales for the sales-based commodities in the applicable calendar year and the producer's crop insurance indemnities and NAP and WHIP+ payments for the sales commodities for the applicable crop year within the specified range, multiplied by the payment rate for that range in Table 2 of paragraph (j) of this section.

(ii) Eligible sales only includes sales of raw commodities grown by the producer; the portion of sales derived from adding value to the commodity, such as processing and packaging, and from sales of products purchased for resale is not included in the payment calculation unless determined eligible by the Secretary.

(3) Payments for producers of sales commodities who began farming in 2020 and had no sales in 2019, calculated as provided in paragraph (i)(2) of this section, except that the payments will be based on the producer's actual 2020 sales, without crop insurance indemnities, NAP or WHIP+ payments, as of the date the producer submits an application for payment under this section.

(j) * * *

Table 2 to Paragraph (j)—Payment Rates for Sales Commodities

2018 or 2019 Sales range (including crop insurance indemnities and NAP and WHIP+ payments)	Percent payment factor
* * * * *	

* * * *

(l) For eligible contract producers, if eligible revenue for the period from January 1, 2020, through December 27, 2020, decreased compared to eligible revenue for the period from January 1, 2018, through December 27, 2018, or the period from January 1, 2019, through December 27, 2019, then payments will be equal to:

(1) Eligible revenue received from January 1, 2018, through December 27, 2018, or from January 1, 2019, through December 27, 2019; minus

(2) Eligible revenue received from January 1, 2020, through December 27, 2020; multiplied by

(3) 80 percent.

(4) USDA will adjust the eligible revenue based on information certified by the contract producer on form AD-3117B for contract producers who did not have a full period of revenue from January 1 to December 27 for either 2018 or 2019, or who increased their operation size in 2020. Information required to calculate these adjustments may include a contract producer's square footage increase to the operation in 2020, or a contract producer's production or number of turns for 2018, 2019, or 2020, as applicable.

(m) For eligible contract producers who did not receive eligible revenue from January 1 through December 27 in 2018 or 2019, but received eligible revenue for the period from January 1, 2020, through December 27, 2020:

(1) FSA will divide the eligible revenue received from January 1, 2020, through December 27, 2020, by the result of 1 minus the average revenue loss level, determined by USDA for a geographic area based on the best available data including, but not limited to, losses reported by other contract producers for the same area and type of livestock or poultry; and

(2) The payment will be equal to:

(i) The result of the calculation in paragraph (m)(1) of this section minus the contract producer's eligible revenue received from January 1, 2020, through December 27, 2020; multiplied by

(ii) 80 percent.

(n) Payments under paragraphs (l) and (m) of this section and the average revenue loss levels under paragraph (m)(1) of this section will be calculated separately for the following categories:

(1) Chickens – broilers, pullets, and layers;

(2) Chicken eggs;

(3) Turkeys;

(4) Hogs and pigs;

(5) Ducks, geese, pheasants, quail; and

(6) All other eligible poultry eggs.

(o) The calculations in paragraphs (l) and (m) of this section are subject to the availability of funds and will be factored, if needed.

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